

FORENSIC COMPETENCY EVALUATION

April 1, 2015

Judge Tim Everett
Immigration Court
10250 Rancho Road, Suite 201-A
Adelanto, CA 92308

IDENTIFYING INFORMATION

NAME: [REDACTED]
DATE OF BIRTH: [REDACTED]
AGE: 43 years old
FILE NUMBER: A [REDACTED] 046
DATE OF EVALUATION: 3/16/15

Note: The respondent reported that his date of birth as indicated in his records is incorrect and that his correct date of birth is [REDACTED] which would make him 53 years old.

REASON FOR REFERRAL

In the interest of providing enhanced procedural protections to unrepresented detained aliens with serious mental disorders or conditions, the Court asked this evaluator to conduct an examination to assess [REDACTED] for the purpose of competence to represent himself in immigration proceedings.

COMPLAINTS

The Executive Office for Immigration Review (EOIR), per the Honorable Judge Tim Everett, filed a Mental Health Examination Referral for respondent, [REDACTED], who is currently facing removal proceedings under § 240 of the Immigration and Nationality Act (INA). According to the Notice to Appear dated on 1/6/15, respondent is categorized as an Alien Present without Admission or Parole. The Department of Homeland Security alleged the following: 1) respondent is not a citizen or national of the United States, 2) respondent is a native and citizen of Mexico, 3) respondent entered the United States at an unknown place, on an unknown date, and 4) respondent was not then admitted or paroled after inspection by an Immigration Officer. The respondent is charged with removability under INA §212.

EVALUATION PROCEDURE & SOURCES OF INFORMATION

The service of a language interpreter was provided by the Court to conduct the present evaluation given that this evaluator was not fluent in the respondent's language.

The following sources of information were utilized in the present evaluation:

Interview and Psychological Testing Data

- A clinical interview incorporating competency related abilities and the following psychological tests were administered at the U.S. Federal Building in Los Angeles, California for approximately 1.5 hours.
 - Mini Mental Status Examination-2 Standard Version (MMSE-2)
 - Rey-15 Item Test (Rey-FIT)
 - Test of Memory Malingering (TOMM)—Attempted

Collateral Records Available for Review

- United States Department of Justice, Executive Office for Immigration Review, Immigration Court, Adelanto, California, Order for Competency Assessment and Report of Examination by Tim Everett, Immigration Judge, dated 3/10/15
- Mental Health Examination Referral, dated 3/4/15
- Docket Notes-TRE, dated 1/20/15 and 2/12/15
- Department of Homeland Security's Notice of Franco-Gonzalez Class Membership and Request for Competency Inquiry by Alvin Ratana, Assistant Chief Counsel, DHS, ICE, dated 2/26/15
- Record of Deportable/Inadmissible Alien, Form I-213, dated on 1/6/15
- Notice to Appear, Form I-862, dated 1/6/15
- Warrant for Arrest of Alien, Form I-200, dated 1/6/15
- Notice of Custody Determination, Form I-286, dated 1/6/15

STATEMENT OF NON-CONFIDENTIALITY

Prior to beginning the evaluation the respondent was informed of the nature and purpose of the evaluation, as well as the associated limits of confidentiality. He was informed that this evaluation was court ordered to determine his competence to represent himself in immigration proceedings. He was also informed that information he provided during this evaluation would become part of my report to the court and that such information may not be used to deport or deny his request to stay in the United States. When asked if he understood he nodded and said, "Yes." However, it was unclear if he truly understood the nature and purpose of the evaluation as he went onto say that he would like to return to Mexico. When asked if he would be willing to participate in the evaluation he said, "Yes." With his agreement the evaluation proceeded.

RELEVANT HISTORY

The following information about the respondent's history was gathered from his own self-report as well as available collateral information that was reviewed at the time of this evaluation. He was considered to be a fair historian. The veracity of this information is only as accurate as its source.

Family/Social History: Mr. [REDACTED] reported that he has three brothers and one sister and that he was the second to the youngest child born to his mother. He reported that he never met his father and that he was raised by his mother and maternal grandfather. He reported no history of developmental problems. He said that he married in 1982 and that he fathers 11 children (three daughters and eight sons). He reported that his mother, wife, and children all reside in Mexico and that he has extended relatives in the United States. Prior to incarceration, he said that he was living with a cousin for about five years. He reported that he is a native to Mexico and that he came to the United States about 10 years ago. Mr. [REDACTED] said that he has not returned to Mexico since coming to the United States. He reported that he came to the United States to find employment and that he has been sending money home to help his family.

Educational History: Mr. [REDACTED] said that he attended school up until the second grade while in Mexico and that he has not received any education thereafter.

Employment History: Mr. [REDACTED] reported that he has consistently worked for a factory packing soup for 10 years since his arrival to the United States. He said that he gained employment through family friends. He

did not report having any difficulties performing his job duties and said that he was taught to package soup by the factory supervisor.

Medical History: Mr. [REDACTED] did not report any physical health problems; however, he also said that he was taking an unknown medication at Adelanto Detention Center of which he believed may be for high blood pressure. He then said that he was unsure what the medication was for. He reported no history of head injuries, loss of consciousness, hospitalizations, serious illnesses, major injuries, and seizures.

Psychiatric History: Mr. [REDACTED] reported no history of mental health treatment or problems. He did not report any symptoms of psychosis or mood disorders. He reported feeling "fine" and that he was "very at ease."

Substance Abuse History: Mr. [REDACTED] said that he first tried alcohol at the age of 18 and said that he would drink a few beers at least twice a week. He said that he experimented with crystal methamphetamine on one occasion.

Legal History: Mr. [REDACTED] criminal records were not available for review at the time of this evaluation. According to available records, he was arrested on 7/16/14 for a violation of PC 245 (a) (1), Assault with a Deadly Weapon without Firearm with Gross Bodily Injury. He was convicted for the above violation and sentenced to 340 days in jail with three years of probation. Mr. [REDACTED] said that his current arrest and incarceration was his first time in trouble with the law. He reported that he was arrested for hitting a person. He was able to explain that he was sentenced to jail and thereafter he was transferred to immigration court and went to Adelanto Detention Center.

Relevant Information From Record Review:

According to Docket Notes-TRE dated on 1/20/15 and 2/12/15, Mr. [REDACTED] was noted to only speak Spanish and was limited in his ability to read and write Spanish. It was noted that Mr. [REDACTED] was not speaking clearly and that he was "clearly intellectually slow." He had difficulty understanding the immigration proceedings when explained to him and was unable to discuss more abstract concepts. It was also noted that Mr. [REDACTED] denied having a mental health history.

On the Mental Health Examination Referral dated 3/4/15, it was noted by Judge Tim Everett that Mr. [REDACTED] presented with a history of limited academic achievement, confused disorganized thinking, poor intellectual functioning, and a lack of responsiveness in court. The Judge made the following notes about Mr. [REDACTED]: "[Respondent] does not understand rights or purpose of proceedings, but not clear if due to a mental disorder."

ASSESSMENT RESULTS

Behavioral Observations/Mental Status: Mr. [REDACTED] was transported from Adelanto Detention Center to the U.S. Federal Building in Los Angeles for the present evaluation. He is a 43 year old (according to his recorded age, not his stated age), Mexican male who appeared older than his recorded age. He wore jail issued attire. His grooming and hygiene appeared adequate. He had on clean clothes, his hair was combed, and his fingernails were trimmed short and clean. He presented with good eye contact, normal posture, and his motor activity was unremarkable. Mr. [REDACTED] was oriented to person, place, time, and situation. He was able to state his full name, age, date of birth, and place of birth. He reported that he was detained at Adelanto Detention Center and acknowledged that he was currently facing immigration proceedings. Although he reported feeling "fine" he was observed to be somewhat anxious and guarded. The translator noted that Mr. [REDACTED] speech was unclear and that that he often slurred at the end of his words, which made it difficult to understand him. Mr. [REDACTED] experienced difficulty tracking discussions and would often become confused about what was being discussed, and may provide an irrelevant response to a question. He experienced difficulty verbalizing his thoughts and demonstrated a very basic understanding of language. More complex

terminology had to be defined using very simplistic language to assist him in understanding. He was observed to be more confused and unable to understand when more complex concepts were discussed or presented to him. He experienced difficulty attending and concentrating to information that was presented to him and often strayed off the topic to talk about other things. His thoughts were logical and void of any delusional content or evidence of a thought disorder. He did not report experiencing any hallucinations. Mr. [REDACTED] did not report any suicidal/homicidal ideation, plan, or intent at the time of this evaluation. He did not report having any memory problems; however, he was unable to recall detailed historical information. His abstraction ability was concrete and he presented with cognitive deficits. However, Mr. [REDACTED] appeared to be embarrassed about his cognitive limitations and made attempts to avoid having his inabilities known by behaving in a manner that was less than cooperative. He was quick to say that he did not know when answering interview questions and he did not exert effort to perform well when asked to complete testing tasks presented to him. When pressed to answer questions or to perform he reported having difficulty understanding what was being asked of him because of his lack of ability to read or write. As such, he appeared to hide his inabilities behind a false bravado attitude of being uncooperative.

Results of Psychological Testing

Mini Mental Status Examination-2 Standard Version (MMSE-2): The MMSE-2 is an assessment tool used to screen for cognitive impairment. Mr. [REDACTED] received a total score of 19 out of a total of 30 possible points, indicating moderate cognitive impairment.

Rey-15 Item Test (Rey-FIT): The Rey-FIT is a measure designed to detect memory suppression. Mr. [REDACTED] performance on this test (recall = 4, recognition correct = 4, recognition false positives = 1, combined score = 7) fell below the empirically derived cutoff score and thus, gave evidence of a deliberate attempt to suppress his memory. It is important to note that he was less than cooperative when asked to complete this test. This test requires for the Respondent to examine a page with 15 different things on it for a brief period of time before the respondent is then asked to draw as many of the things that he is able to remember. Thereafter, the respondent is given a page with 30 different things on it and asked to circle the 15 things that were previously shown to him. During administration of this test, Mr. [REDACTED] was not cooperative in following the directions of the test. When showing him the page with 15 different things on it he did not examine it, but rather proceeded to talk about other things despite having been redirected several times to attend to the testing stimuli placed in front of him. Therefore, his testing behavior likely negatively influenced his test scores on this measure.

Test of Memory Malinger (TOMM): The TOMM is a test designed to assist in identification of individuals who are malingering or exaggerating memory deficits. This test presents a series of pictures to examinees that subsequently are presented pairs of pictures and instructed to identify which one they had previously viewed. During administration of the trial items to ensure understanding before beginning the actual test itself, Mr. [REDACTED] demonstrated marked difficulty understanding the directions. After several attempts, it was apparent that he would not be able to engage in the task meaningfully and thus, the test was discontinued.

OPINION REGARDING COMPETENCE

The following opinions about Mr. [REDACTED] competence to represent himself in immigration proceedings were gathered from a clinical interview that incorporated the assessment of competency related abilities. The Court asked this evaluator to address the issue of competency as follows:

Does the respondent have rational and factual understanding of 1) the nature and object of the proceeding, including its adversarial nature, 2) the allegations and charge(s), 3) the possible outcomes of the proceeding, and 4) the roles of participants in the proceeding?

No. Mr. [REDACTED] has some basic and minimal understanding of the nature of the proceedings and the allegations and charges brought against him. He stated that he was arrested because he hit someone and that because of that crime he is now involved in Immigration Court for the purpose of removal proceedings. He said that the Court is currently seeking to remove him because he is an undocumented alien. When asked about the possible outcomes of the proceedings he said that he did not know how to explain what the possible outcomes were given that he did not go to school. However, he acknowledged that he would be able to stay in the United States if he won his case and that he would have to return to Mexico if he lost his case. When asked what he would like for the outcome to be in his case, he said that he would like for his case to go well and that he would like to stay in the United States in order to financially help his family. He also said that he would not mind returning to Mexico to see his children since he has been in the United States for the past 10 years. He demonstrated minimal understanding of the roles of the participants in the proceeding. When asked about his role in court he said that his role is to answer questions because he was illegal. When asked about the Judge he said that the Judge's job is to tell him his rights and explain things to him. He said that the DHS counsel's job is to ask him questions. He understood that witnesses would tell the Court what they saw or heard. He was unable to explain the adversarial nature of court and said that he was unsure if someone was against him in court. Although Mr. [REDACTED] does not present with delusions or a thought disorder that would hinder his ability to rationally understand information presented to him, Mr. [REDACTED] has minimal, if any, factual understanding of the nature and object of the proceeding, including its adversarial nature, the allegations and charge(s), the possible outcomes of the proceeding, and the roles of participants in the proceeding. His lack of understanding is likely due to cognitive deficits and he may benefit from legal orientation and/or training.

Does the respondent have rational and factual understanding of the: 1) privilege of representation by counsel, 2) right to present, examine, and object to evidence, 3) right to cross-examine witnesses, and 4) right to appeal?

No. When asked about his rights in the immigration proceedings he reported having the right to work and to help out his family. He was unable to identify any of his rights relevant to the immigration proceedings. When his rights were explained to him he demonstrated difficulty understanding them and was unable to explain in his own words what his rights were. He appeared confused even after several teachings of his rights by this evaluator. For example, after teaching he was again asked about his understanding of the privilege of representation and he said, "That if I show up and I have the money, I'll pay some bond." He then stated that he was informed by the prosecutor that he could stay in the United States. Also, he said that he was asked by the prosecutor if he was afraid to return to Mexico and he reported that he said no. He indicated that he asked the prosecutor three times to "grant [him] volunteer departure." It was apparent that Mr. [REDACTED] was confusing the role of the DSH counsel and the Judge. Given the above information, Mr. [REDACTED] does not demonstrate understanding of the privilege of representation by counsel, the right to present, examine, and object to evidence, the right to cross-examine witnesses, and the right to appeal due to his cognitive limitations. He may benefit from legal orientation and/or training to assist with understanding his rights.

Does the respondent have sufficient present ability to: 1) exercise the rights listed above, 2) make informed decisions about whether to waive the rights listed above, 3) respond to the allegations and charges in the proceeding, 4) present information and evidence relevant to eligibility for relief, and 5) act upon instructions and information presented by the Immigration Judge and government counsel?

No. Mr. [REDACTED] lacks understanding of the nature of the immigration proceedings and the rights afforded to him in such proceedings. He presented with cognitive deficits that would make it difficult for him to listen to, and to track and comprehend discussions. He has difficulty recalling information or remembering information long enough to work it through to understanding. He may become easily confused especially when dealing with more complex or abstract concepts and may not be able to respond relevantly. His

manner of thinking is concrete and he presents with language difficulties, such that he struggles to verbalize his thoughts and ideas and to speak clearly. Therefore, it is unlikely that he has the ability to exercise the rights listed above, make informed decisions about whether to waive the rights listed above, respond to the allegations and charges in the proceeding, present information and evidence relevant to eligibility for relief, and act upon instructions and information presented by the Immigration Judge and government counsel.

Are there other factors relevant to the respondent's competence to represent self?

Mr. [REDACTED] may engage or behave in a less than cooperative manner in an attempt to conceal his inabilities.

RECOMMENDATIONS

[REDACTED] was referred for an examination to assess his competence to represent himself in immigration proceedings. Based on the current evaluation the following recommendations are provided:

1. It is my opinion that the respondent be adjudicated incompetent to represent himself in immigration proceedings.

Given that it is my recommendation that the respondent be adjudicated incompetent to represent himself, the Court asked for the following information:

Mental Disorder and Impairments Causing Incompetence:

The cause of the respondent's incompetence is likely Mild Intellectual Disability. There are no psychotic or mood disorders present.

Assessment of the respondent's ability to: 1) make a rational decision about being represented by counsel and 2) assist counsel.

Mr. [REDACTED] has the ability to make a rational decision regarding representation by counsel and to assist counsel in a rational and meaningful manner. He said that he would be willing to collaborate with counsel if assigned by the Court and reported believing that an appointed counsel would be helpful to him. He provided the following explanation as to why he would welcome the help of counsel: "There's [sic] questions that I don't know...court is confusing to me because they ask me one thing and another thing and you get messed up."

My opinions are based on information that was available to me at the time of this report. If further or contrary information were to become available, my opinion might change accordingly. Thank you for the opportunity to evaluate this respondent.

Respectfully submitted,

(b) (6)

Cc: [REDACTED], Respondent; Sandra Santos, Esq., Senior Attorney (DHS); and Jack Weil, Assistant Chief Immigration Judge